

REMARKS

Claims 10-26 are pending in this application. Claims 18, 19, 25 and 26 are withdrawn from consideration. By this Amendment, the specification, drawings and claims 11, 12, 18, 19 and 20 are amended and claims 21-26 are added. No new matter is added by this Amendment.

The Office Action objected to the specification based on the absence of section headings. Sections headings were added to the specification by Amendment A filed January 10, 2011. As a result, Applicants request that the objection be withdrawn.

The Office Action objected to the drawings based on the assertion that particular features of the claims are not shown in the drawings. Although Applicants submit that no new drawing is needed, in the interest of expediting prosecution a new Fig. 4 is added to show these features. As a result, Applicants request that the rejection be withdrawn.

Withdrawn claim 18 is amended to include all of the features of claim 10. Upon allowance of claim 10, Applicants request rejoinder and allowance of claims 18, 19, 25 and 26.

The Claimed Invention

An exemplary embodiment of the invention, as recited by independent claim 10, is directed to a refrigerator having a strip disposed on a top of the curved edge of a compartment and including a plastic core and a metal jacket holding the plastic core in a curved configuration.

Another exemplary embodiment of the invention, as recited by independent claim 20, is directed to a refrigerator having a strip disposed on a top of the curved edge of a compartment and including a plastic core and a metal jacket holding the plastic core on the curved edge, wherein the strip has a groove into which the edge of the compartment for accommodating articles to be cooled is inserted.

An object of the invention is to provide a refrigerator in which a strip that is also curved is placed on a curved edge of a compartment for accommodating articles to be

cooled, and which is simple and inexpensive to produce with a small number of tools.

The object is achieved in that the strip placed on the curved edge of the compartment is constructed from a plastic core and a metal jacket, the jacket holding the plastic core in a curved configuration. Such a strip may be initially produced comparatively simply in a rectilinear configuration, then bent to fit the shape of the edge. Whilst the plastic material of the core is generally only elastically deformed by such bending, plastic deformation takes place on the metal of the jacket, which deformation persists when the bending force is no longer exerted and prevents the plastic core from returning to a rectilinear configuration.

The Leimkuehler Reference in view of the Fisher Reference

The Office Action rejected claims 10 and 20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0020385 to Leimkuehler et al. in view of U.S. Patent No. 1,967,666 to Fisher. Applicant respectfully traverses the rejection.

Initially, Applicants respectfully submit that Fisher is not available to the Examiner for use in a rejection because Fisher is clearly non-analogous art. “[A] prior art reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*” (emphasis original, M.P.E.P. § 707.07(f). Fisher is neither within the field of Applicants’ endeavor nor reasonably pertinent to the particular problem with which the Applicants were concerned.

The field of Applicant’s endeavor is refrigerator compartment art. In stark contrast, the field of endeavor of Fisher is the table top art. One of ordinary skill in the art who is in the field of the refrigerator compartment art would not have been familiar with, nor have looked to Fisher because Fisher is directed to the completely different, and unrelated field of table tops. Fisher is not within the field of Applicants’ endeavor.

Fisher is also not reasonably pertinent to the particular problem with which the

Applicants were concerned. As clearly explained by the specification at, for example, paragraph 005, the Applicants were concerned with the problem of cost effectively providing a strip for a curved edge of a refrigerator compartment. In stark contrast, Fisher is concerned with the completely different and unrelated problem of protecting the edge of a glass table top (page 1, lines 10-16). One of ordinary skill in the art who was concerned with the problem of cost effectively providing a strip for a curved edge of a refrigerator compartment as the Applicants were concerned would not have referred to Fisher because it is directed to the completely different and unrelated problem of protecting the edge of a glass table top. Indeed, Fisher has absolutely nothing to do with the problem of cost effectively providing a strip for a curved edge of a refrigerator compartment. Thus, Fisher is not reasonably pertinent to the particular problem with which the Applicants were concerned.

Applicants respectfully submit that Fisher is neither within the field of Applicants' endeavor nor reasonably pertinent to the particular problem with which the Applicants were concerned and, as such, is non-analogous art and therefore, unavailable for use in rejecting the claims.

Indeed, the citation of Fisher is a clear case of the use of impermissible hindsight reconstruction.

"In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." (Emphasis original, M.P.E.P. 2141.02.I.)

"To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention 'as a whole' would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the 'differences,' conduct the search and evaluate the 'subject matter as a whole' of the invention. The tendency to resort to 'hindsight' based upon

applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of facts gleaned from the prior art." (Emphasis added, M.P.E.P. § 2142).

In the present instance, the Examiner clearly did not locate Fisher during a search for relevant art that was within the field of Applicants' endeavor or reasonably related to the particular problem which the applicants were concerned. Rather than viewing the invention as a whole as required, the claim was dissected to focus only upon the construction of an outer covering to an inner member and the Examiner resorted to the use of hindsight in an attempt to locate anything that was related to the construction of an outer covering to an inner member. This was done likely through a keyword search. Regardless of the difficulty of avoiding hindsight, it is clear that impermissible hindsight is the only explanation for locating the non-analogous art of Fisher.

Further, Applicants submit that, without the teachings of the present application, there would have been no reason to combine the sheet metal strip and body member construction of Fisher with the bucket of Leimkuehler. As stated above, Leimkuehler discloses no recognition of any benefit to providing an outer metal strip over an inner member. Fisher does not mention refrigerator buckets and only provides a solution for protecting the edge of a glass table top.

Even if it were permissible to combine features of Fisher with the refrigerator of Leimkuehler (and Applicants reiterate that it is not), the claimed invention would not result.

Claim 10 includes the feature of a strip including a plastic core and a metal jacket holding the plastic core in a curved configuration.

The office action defined metal jacket (sheet metal strip 6) of Fisher does not hold the office action defined core (body member 2, 3, 4, 5) of Fisher in any configuration, much less a curved configuration. Applicants could find nothing in Fisher that says that the configuration of body member 2, 3, 4, 5 is in anyway held by sheet metal strip 6. It appears from Fisher that body member 2, 3, 4, 5 is bent into the configuration shown in

Figs. 2 and 3 before sheet metal strip 6 is attached to it. Applicants could find nothing in Fisher that suggests that body member 2, 3, 4, 5 would not keep its configuration without being held in that configuration by sheet metal strip 6. As a result, the configuration of body member 2, 3, 4, 5 is not held by sheet metal strip 6. Further, body member 2, 3, 4, 5 of Fisher is described in Fisher as “steel or the like” (page 1, lines 37-38). Applicants could find nothing in Fisher that disclosed or even suggested that body member 2, 3, 4, 5 is made of plastic or that sheet metal strip 6 would be strong enough to hold a plastic body member in a curved configuration.

Claim 20 includes the feature of a strip including a plastic core and a metal jacket holding the plastic core on the curved edge of the compartment.

Body member 2, 3, 4, 5 of Fisher is described in Fisher as “steel or the like” (page 1, lines 37-38). Applicants could find nothing in Fisher that disclosed or even suggested that body member 2, 3, 4, 5 is made of plastic or that sheet metal strip 6 would be strong enough to hold a plastic body member on the curved edge of a compartment.

Trim piece 18 of Leimkuehler is fixed to container 20 by energy director 32 during ultrasonic welding. Applicants submit that it would not have been obvious to add to the ultrasonic welding of Leimkuehler a metal jacket that holds trim piece 18 to container 20. Further, it is unclear how the configuration of Fisher could hold trim piece 18 to container 20. Because the configuration of Fisher is nothing like the configuration of Leimkuehler, Applicants submit that it would not have been obvious from the combination of Leimkuehler and Fisher how a metal jacket can hold trim piece 18 on container 20. Fisher shows sheet metal strip 6 and body member 2, 3, 4, 5 attached to a flat end of a table top 1. In contrast, container 20 of Leimkuehler does not have a flat edge to which trim piece 18 is attached. It is unclear how sheet metal strip 6 of Fisher could hold the irregularly shaped trim piece 18 of Leimkuehler to container 20. If the Office Action is merely asserting that it would have been obvious to cover trim piece 18 with sheet metal strip 6, then Applicants submit that such a covering application would not result in sheet metal strip 6 holding trim piece 18 to container 20, as required by claim 20.

In view of the foregoing, Applicant respectfully submits that the combination of

Leimkuehler and Fisher does not teach or suggest the features of claims 10 and 20 and, therefore, rejection under 35 USC §103(a) is inappropriate. As a result, Applicants respectfully request withdrawal of the rejection.

The Leimkuehler Reference in view of the Fisher Reference and the Bono Reference

The Office Action rejected claims 11-17 under 35 U.S.C. §103(a) as being unpatentable over Leimkuehler in view of Fisher and U.S. Patent No. 3,233,644 to Bono. Applicant respectfully traverses the rejection.

Bono does not remedy the deficiencies of Leimkuehler and Fisher.

As explained above, the combination of Leimkuehler and Fisher does not teach or suggest the feature of a strip including a plastic core and a metal jacket holding the plastic core in a curved configuration.

Indeed, the Examiner does not allege that the combination of Leimkuehler and Fisher teaches or suggests the feature of a strip including a plastic core and a metal jacket holding the plastic core in a curved configuration, as recited by claim 10, from which claims 11-17 depend.

In view of the foregoing, Applicant respectfully submits that the combination of Leimkuehler, Fisher and Bono does not teach or suggest the features of claims 11-17 and, therefore, rejection under 35 USC §103(a) is inappropriate. As a result, Applicants respectfully request withdrawal of the rejection.

CONCLUSION

In view of the above, Applicants respectfully request entry of the present Amendment, rejoinder of claims 18, 19, 25 and 26, and allowance of claims 10-26. If the Examiner has any questions regarding this amendment, Applicants request that the Examiner contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

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